



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

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TM:JD/NMA  
F.#2005R0060

271 Cadman Plaza East

Brooklyn, New York 11201

May 22, 2011

By ECF

The Honorable Nicholas G. Garaufis  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Vincent Basciano  
Criminal Docket No. 05-060 (S-12) (NGG)

Dear Judge Garaufis:

The government respectfully submits this letter in response to (1) the defendant's letter of May 21, 2011 regarding the Court's proposed preliminary penalty phase jury instruction; and (2) the defendant's new proposed mitigating factor Eleven.

First, with regard to the defendant's proposed instruction, in order to avoid juror confusion and to be as clear as possible about the jurors' obligations in the penalty phase, the government respectfully requests that the Court modify the instruction to read as follows:

As I indicated to you during jury selection, your decision regarding whether to impose a sentence of death is a personal, moral decision to be made by each of you, individually. I instruct you that the government must prove to each of you, individually and beyond a reasonable doubt, that a sentence of death should be imposed in this case.

Second, the defendant has altered his eleventh proposed mitigating factor to read as follows: "[t]he evidence is insufficient to justify a sentence of death." However, this is not a mitigating factor at all - it simply summarizes what will ultimately be asked of the jury, which is to decide if the

aggravating factors put forth by the government prove beyond a reasonable doubt that the death sentence is warranted for the defendant when weighed against the mitigating factors, if any, found by the jury. Because proposed mitigating factor Eleven is vague and merely repeats the jury instruction, the government respectfully requests that it be stricken.

Respectfully submitted,

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cc: Clerk of Court (NGG) (by ECF)  
Defense Counsel (by Hand Delivery & ECF)